

CONTRIBUTION TO
MENTAL PATHOLOGY.

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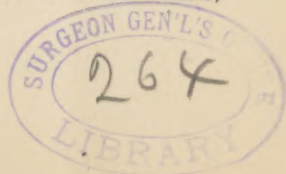
CODIFICATION OF THE COMMON LAW AS TO INSANITY.

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SOCIETY, ETC.

I AM sure that the acute minds of many of our most distinguished physicians and lawyers have not failed to perceive the incongruities and deficiencies of the present law, and yet there are many who seem adverse to any attempt to make the law of insanity more conformable than it is with medical science. Lord Justice Bramwell told the select committee on the homicide bill: "I think that although the present law lays down such a definition of madness that nobody is hardly ever really mad enough to be within it, yet it is a logical and good definition." He further stated that in his opinion, "the law was right, because it might deter many insane persons from crime by the threat of punishment." Lord Justice Blackburn, in his testimony before the select committee on the homicide bill, said: "On the question of what amounts to insanity that would prevent a person being punishable or not, I have read every definition which I could meet with, and never was satisfied with one of them, and have endeavored in vain to make one satisfactory to myself. I verily believe that it is not in human power to do it. You must take it that *in every individual case you must look at the circumstances* and do the best you can to say whether it was the disease of the mind which was the cause of the crime, or the party's criminal will." He also said: "*but we cannot fail to see that there are cases where the person is clearly not responsible, and yet knew right from wrong.*"

* Physician to Sunnyside: a private hospital for nervous and mental diseases, inebriety and the opium habit.



He then goes on to give the case of a woman he tried, who had killed one child, and was going to kill another, but who fortunately dropped the second child and went to a neighbor, telling her what she had done. This woman clearly knew the difference between right and wrong, and knew the character of the act, and, on the definition in the McNaughton case, in 1843, was guilty. Lord Justice Blackburn, however, as the woman was as a raving maniac, so charged the jury on the ground of exceptional cases, that the jury found her "not guilty, on the ground of insanity;" and rightly. The Lord Chief Justice of England, in his criticism of Sir Fitzjames Stephenson's plan of codifying the law of insanity, said:

"As the law, as expounded by the judges in the House of Lords, now stands, it is only when mental disease produces incapacity to distinguish between right and wrong, that immunity from the penal consequences of crime is admitted. The present bill introduces a new element, the absence of the power of self-control. I concur most heartily in the proposed alterations of the law; *having been always strongly of opinion that, as the pathology of insanity abundantly establishes, there are forms of mental disease in which, though the patient is quite aware he is about to do wrong, the will becomes overpowered by the force of irresistible impulse; the power of self-control, when destroyed or suspended by mental disease, becomes, I think, an essential element of responsibility.*"

The Lord Chief Justice of England, in his weighty and truly scientific opinion, the intrinsic weight of which is immense, deserves the admiration of both the medical and legal profession all over the world. Lord Moncrief, the Lord Justice Clerk of Scotland, has said from the bench that "*in point of fact, there are very few lunatics who do not know right from wrong,*" an opinion which I have myself insisted on before the New York Medico-Legal Society in two different papers read there. If we have *the absence of self-control produced by disease of the body affecting the mind*, in any given case of homicide on trial, it seems to me that every physician and every fair-minded lawyer will concur in acknowledging that we have here a philosophic or scientific principle on which to found the plea of "not guilty, on the ground of insanity," and one which includes the cases of all insane criminals. It does

not seem to me that, in the question of what constitutes insanity, the members of the two great professions of law and medicine should, or at all need to, entertain essentially different and irreconcilable views, or that on the question of the irresponsibility of criminals who are supposed to be insane, there should be such a diversity of opinion as exists to-day. The physician naturally studies the whole history of his patient and his ancestry, and searches for the causes of any bodily and mental changes that he finds, and thus arrives at the true pathology of the disease; while the lawyer and jurist are mainly interested in the *existence* of mental disease, its *degree*, and its *influence on conduct*. We know far more about insanity than they did in the last generation, and it is obviously unfair that laws pertaining to insanity, when the knowledge of that disease was comparatively in its infancy, should not be amended to keep pace with our increased knowledge of the pathology of mental disease. In that form of homicidal monomania, where the patient is possessed of a sudden, blind, motiveless, unreasoning impulse to kill, I do not think that there is any desire, motive or reasoning intention to commit such a deed, the true pathology of this form of insanity consisting, it seems to one, in a *vis a tergo* received from the diseased action of the brain. We have here a *diseased state of mind with absence of self-control*. We have in suicidal monomania also, a *vis a tergo* received from the diseased action of the brain, in which, while our patient, perhaps, exhibits no other mental derangement, with no delusion or other intellectual disorder, has the blind, motiveless, unreasoning impulse to suicide, which, alike with the homicidal impulse, is the joint result of undoubted insanity. In both these cases the impulse is long, enduring and gives rise to actions of patient deliberation and of cunning contrivance. The physician and the legal profession are willing alike to recognize disease in the suicidal act; why, then, the apparent unwillingness to recognize disease in the homicidal act? We must not

look at these questions socially or ethically, but by the aid of the light of modern pathology, as the Lord Chief Justice of England has done already. There are many persons born with a predisposition to madness, and symptoms indicating that disease, display themselves at frequent intervals through the whole course of life, but for many years may never reach such a pitch as to induce those in contact with such persons to treat them as insane. When an overt act *is* committed by such persons can anyone question the value of a careful examination of the past life and acts of the accused? His life has exhibited the natural history of insanity, and, with our present accurate and trustworthy method of investigation, a careful and experienced physician in nervous diseases can clearly point out to the lawyer and jurist the unmistakable evidences of mental disease, which the latter, necessarily, alone and unaided, could not discover. The physician and lawyer should mutually aid each other in such investigations, impartially and by the light of science. There should be no rule of law that conflicts with the elementary truths of insanity, on which only such rules should be founded, and medical jurisprudence is of value only so far as it represents the acknowledged truths of science. No honest, scientific conclusion, however great an advance it may be upon existing views, is a dangerous innovation. There is a very false idea in the minds of well educated persons, which I desire here to correct, that the skilled opinions of the medical witness—the result of years of reflection and experience in his particular specialty—that the perceptions of truth of the medical expert are obscured by the fact of his receiving a fair compensation for his services. The medical expert is called upon by the lawyer who lays before him the evidence to be produced, and asks him for his opinion respecting it. The physician informs him either, that if he can prove the facts as he states them, he has a good case, and expresses his willingness to testify to that effect, or he tells him that the facts of the case *do not*

justify the construction which the lawyer desires to put upon them, and declines to testify in the case.

The testimony of an honest medical expert is never wholly and unconditionally in favor of one side only, *unless such a result be warranted by the facts*. His judgment is *not* warped by the fact of his receiving compensation. If a lawyer comes to the physician and, by an exaggerated statement of facts, enlists the physician's aid as a medical witness, he will find that, if upon an examination of the case the facts do not appear as represented to the physician, the latter, if a scientific man, will either modify or entirely abandon his first conclusion, and decline to testify in the suit.

The frequency of epilepsy, and its injurious effect on the mind, makes its medico-legal relations a subject of great importance, and I have elsewhere pointed out that epileptics are to be classed in the most homicidal group of all the insane.

The late Dr. Ray, of Philadelphia (one of the most eminent of American experts, and one of the most brilliant and scientific men of the profession, a man who had devoted himself to the study of mental pathology for years, and who, in his writings, always displayed thorough observation and original thought; and to whom, in his contributions to mental pathology, his friends can fitly apply the words of Sartor Resartus: "Beautiful it is to understand and know that a *thought* did never yet die, that as thou, the originator thereof, hast gathered it and created it from the whole *past*, so thou wilt transmit it to the whole *future*,") speaks as follows respecting epilepsy:

"The excessive susceptibility of epileptics to nervous impressions, which become distorted if not utterly changed on their way to the sensorium, is a phenomenon not clearly recognized by the profession at large, although it cannot have failed to meet the attention of the closer observer. In medico-legal inquiries, it should never be ignored or forgotten, for it may be the very phase of mental disturbance which prompted the criminal act. In view of what we already know of epilepsy, and of what still remains to be learned, we have a right to require the utmost circumspection and closest investigation whenever the legal

liabilities of epileptics are in question. The fact of its existence being established, is it going too far to say that legal responsibility is presumptively annulled, and that the burden of proof lies on the party that alleges the contrary? People are scarcely ready for it yet, perhaps, but to that complexion must they come at last."

In none of the neuroses is the presence of the elements of moral obliquity, emotions of suspicion as the mainspring of conduct, maniacal fury, sudden ebullitions alternating with periods of lucidity, suicidal or homicidal mania, so conspicuous as in epileptic insanity. Esquirol says that out of 339 female epileptics treated in Charenton, only sixty exhibited no aberration of intelligence. An epileptic convulsion may not occur, but may be represented by sadness, dejection, by sullenness, by ebullitions of rage and ferocity—a *mania transitoria* signalized by suicide, homicide, and every modification of blind and destructive impulse. Trousseau, the great French physician, has said, that wherever there was a revolting or motiveless crime, he suspected the existence of epilepsy; and the late case of Laros of Pennsylvania, who poisoned his whole family, is an example of just such cases. The awakening from epileptic stupor may often resolve itself into an outburst of mental derangement, manifested by extreme vehemence, violence and destructiveness.

I have also stated that puerperal women, and women at the climacteric period are subject at times to dangerous delusions, and also that kleptomania is a peculiarity of a certain number of cases of general paralysis. These facts are classical, and should be so accepted by the legal profession. One of the last cases of general paralysis under my care, was that of a gentleman of prominence and wealth, who would slyly secrete articles of absolutely no value to himself and carry them home, and who, after being placed under my care, manifested this peculiarity for many months, so that his nurse would every few days have quite a collection of small articles to gather up and return to their appropriate places. I have observed this in cases of the ordinary type with grand delirium, and also in the senile form, characterized by progressive

enfeeblement of the intellect and of long duration. It is a very interesting question in mental pathology, whether we are entitled to hold, in general paralysis of the insane, that the resumption of apparently healthy mental action, which we see in the remissions that sometimes occur, is compatible and co-existent with persistent structural degeneration? In other forms of mental disease also, after a mental darkness created and maintained for years by the presence of brain wasting, hypertrophy or consolidation of brain-tissue, with what cerebral condition can we identify these sudden flashes of restored intellectual light? In a paper on "Mental Responsibility and the Diagnosis of Insanity in Criminal Cases," read before the New York Medico-Legal Society, and subsequently published in the *London Journal of Psychological Medicine and Mental Pathology*, I suggested a series of eight questions, which, it seemed to me if adopted by jurists in criminal cases, would form a most efficient and just test in any given case. Perhaps the legal profession may prefer the simpler proposition, which, as the result of Sir Fitzjames Stephen's attempt to codify the common law of England on insanity, may be briefly summed up as follows, viz: *Homicide is not criminal, if the person by whom it is committed is, at the time when he commits it, prevented by any disease affecting his mind from controlling his own conduct.* This is very simple and very comprehensive, and therefore the legal profession may very properly prefer it to my own. The eight questions which I proposed in my paper are as follows, viz:

1st. Have the prisoner's volitions, impulses or acts been determined or influenced at all by insanity, and are his mental functions—thought, feeling and action—so deranged, either together or separately, as to incapacitate him for the relations of life?

2d. Does the prisoner come of a stock whose nervous constitution has been vitiated by some defect or ailment calculated to impair its efficiency or derange its operations?

3d. Has the prisoner been noticed to display mental infirmities or peculiarities which are due either to hereditary transmission or present mental derangement?

4th. Has the prisoner the ability to control mental action, or has he not sufficient mental power to control the sudden impulses of his

disordered mind, and does he act under the blind influence of evil impulses, which he can neither regulate nor control?

5th. Has the act been influenced *at all* by hereditary taint, which has become intensified, so that the morbid element has become quickened into overpowering activity and so that the moral senses have been overborne by the superior force derived from disease?

6th. Was the act effected by, or the product of insane delusions?

7th. Was the act performed without adequate incentive or motive?

8th. Does the prisoner manifest excitement or depression; moody, difficult temper; extraordinary proneness to jealousy and suspicion; a habit of unreasonably disregarding, ordinary ways, customs and observances; an habitual extravagance of thought and feeling, an inability to appreciate nice moral distinctions; and, finally, does he give way to gusts of passion and reckless indulgence of appetite?

Some, or all, of these are found generally in connection with transmitted mental infirmity. It may be argued that these mental defects signify not mental unsoundness, but human imperfection. Certainly, if we take these manifestations in No. 8, any one of them, singly and alone, we cannot claim such a one as invariably an indication of insanity; but, on the other hand, under certain circumstances, each one of them may be an unmistakable sign of insanity, or rather of a morbid cerebral state, which may readily lapse into insanity. The disappointments and calamities of life obviously act with greater effect upon an unstable mental organism; these causes of disturbances, meeting with a powerful coöperating cause in the constitutional predisposition. Sometimes a crime, even when there have been no previous symptoms to indicate disease, makes the period when an insane tendency has passed into actual insanity—when a weak organ has given way under the strain put upon it. It is an important point in mental pathology to recognize the fact, rendered classical by antiquity—Celsus, who practiced during the reign of Tiberius, and who wrote eight books on medicine, having clearly expressed this law of morbid sympathies and idiosyncrasies—that it is the diseased or weak organ that retains all too strong impressions that effect the economy, and which becomes the center with which are connected all the sensations and all the disorders communicated to the body. The laws of

hereditary transmission operate very often in the development, in successive generations of the same family, of an unstable mental organism, too delicate to stand the wear and tear and haste of modern civilization, and such persons also often exhibit a true congenital deprivation of the normal intellectual faculties. There is a class of persons, with a peculiar nervous temperament, who inhabit the border land between crime and insanity, one portion of which exhibit some insanity, but more of vice; and the other portion of which exhibit some vice, but a preponderance of insanity, and it is very difficult to form a just estimate of the moral responsibility of such persons, especially when we reflect upon the fact that moral feeling is a function of organization, and is as essentially dependent upon the integrity of that part of the nervous system which ministers to its manifestations, as in any other display of mental function. I have met with cases in which, as a result of parental insanity, there has been a seemingly complete absence of moral sense and feeling in the offspring, and this has been a true congenital deprivation, or a moral imbecility, so to speak; of course, such children can hardly fail to become criminals. In this connection, it is interesting to note that moral degeneration often follows as a sequence upon disease or injury to the brain. A severe attack of insanity sometimes produces the same effect, the intellectual faculties remaining as acute as ever, while the moral sense becomes obliterated. It is an important medico-legal point relating to psychological medicine, that not every improvement is the commencement of convalescence, nor is the appearance of a few healthy traits an unquestionable presage of recovery. It is not rare to find a complete remission, consisting in the temporary disappearance of every sign of mental disease during the first month of an attack of insanity, followed by a renewed intensity of the disease.

This, of course, is no more a recovery from disease of the brain, than the remission in malarial fever is

indication of recovery from malarial fever. I have repeatedly witnessed such remissions even in incurable organic diseases of the brain. We cannot explain these cases, but that they occur is perfectly well known to every specialist in diseases of the nervous system, as well as to most observant physicians. It should be borne in mind, therefore, that there may be a condition of mind resembling recovery, but where there is a latent irritability of the brain ready to break out in active insanity, were not such persons prevented from assuming the cares, anxieties and responsibilities of life for themselves. Unreasonable and uncontrollable restlessness and excitement or depression generally characterizes these apparent recoveries, and also very often a peculiar bitterness towards the institution where they have been treated with all gentleness and skill; whereas, in genuine recoveries, it is the rule to find patients entertaining the most lively gratitude to their physician and toward the institution in which they were treated. Dr. Pliny Earle, of Northampton, Mass., one of the most eminent American alienists, the late Dr. Ray of Philadelphia, and the most eminent English alienists have all expressed themselves unanimously on this point.

There are forms of chronic insanity in which the mental manifestations are distinguished less by delusions and gross incoherence, than by a certain mental irregularity and unsteadiness easily recognized by one familiar with diseases of the brain, where the mind is agitated and controlled by each new impulse; and yet this form of mental disease under our present law is clearly incompatible with the kind of insanity which annuls criminal responsibility, for, as a rule, all these cases of which I speak can clearly distinguish between right and wrong.

Finally I would speak of the immense importance of the recognition of the mental condition that is the precursor of decided insanity. This is one of the most interesting points in mental pathology. The depression, unwonted excitability, disregard of the minor proprieties

of life, the change which comes over the warmest affections, quick changes and rapid transitions in the current of the feelings, sleeplessness and a complete change of character and habit; the person meanwhile entertaining no delusions, but occasionally losing his self control, the general air and manner at such times being strongly expressive of the inward emotion; intervals of perfect calmness and self-control, during which the person clearly discerns his true relations to others, and even, perhaps, recognizes the influence which the incipient disease exercises over his feelings and actions; with, finally, the utter downfall of the integrity of the intellect, manifested by the fury of mania or the moodiness, suspicion, depression, and impulses toward self-destruction of melancholia. All these are the successive links forged in the chain of insanity, the study of which is full of interest to the student of mental pathology, who is interested in the amelioration of this scourge of life, and to those who are interested in leading back the wandering mind out of the darkness and mazes of disease into the unclouded light of reason. Such aims are worthy of the warmest sympathy, the deepest respect, and the strongest help of the community.

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